IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 14.02.2002

CORAM:

THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

AND

THE HONOURABLE MR.JUSTICE R.JAYASIMHA BABU

WRIT PETITION NO.11429 OF 2001 AND W.M.P.NOS.16557 to 16558 OF 2001

1. Union of India, rep. by its
General Manager,
Southern Railway, Headquarters Office,
Part Town, Chennai-600 003.

2. The Chief Electrical Workshop Engineer,
southern Railway, Perambur, Chennai-600 023. .. Petitioners

Versus

1. The Registrar,
Central Administrative Tribunal,
Chennai Bench, Chennai-600 104.

2. N.Uthayan

3. K.Umapathy ..Respondents

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For Petitioners ::Mr.R.Thiagarajan,SC
for M/s.V.R.Gopalan

For Respondents ::Mr.Vijay Narain-R2&R3

Prayer: This Writ Petition is filed under Article 226 of the
Constitution of India, for issuance of Writ of Certiorarified Mandamus for
the relief as stated therein.

: ORDER

(Order of this Court was delivered by

F.M.IBRAHIM KALIFULLA, J.)
The question involved in this Writ Petition relates to the correctness of the promotion given to respondents 2 and 3 by order dated 13/14 -12-2000 along with three other persons, namely, R.Ramesh, R. Manimaran, and N.Loganathan?
2. The post to which promotion was made was Tech.Gr.III ELF/P cum Flow Car/Fork Lift Operator hereinafter referred to as "Fork Lift Operators". By proceedings dated 8-7-2000, a proposal was mooted for filling up of two vacancies (unreserved) Fork Lift Operator in the scale of Rs.3050-4590 in DLX shop of Power Unit and volunteers from the categories of Khalasi Helper Grade and Khalasi Grade who had completed two years of service with valid driving licence for driving light motor vehicles, were called upon to submit their applications. It was specifically noted in the said proceedings that the applications without copy of the valid driving licence would be rejected without any notice. It was also stipulated that the eligible employees should have passed necessary trade test to the post of Tech.Gr.III ELF/P cum Flow Car/Fork Lift Operator. The last date for submission of applications was fixed as 18-7-2000. It is stated that though initially applications were called for filling up of only two posts, subsequent to issuance of the said proceedings, as the number of posts got increased due to introduction of more number of fork lifts, the number of posts rose up to 9 from the existing number of 4. It is further stated that in response to the proceedings dated 8-7-2000, ten persons volunteered, out of whom, five were found suitable. In those circumstances, proceedings dated 13/14-12-2000 came to be issued promoting the five individuals including respondents 2 and 3 to the post of Fork Lift Operators. Under Clause 5 of the said order, it was specifically provided that the promotions would be given effect to only from the date of shouldering higher responsibilities at DLX shop/PER.
3. Thereafter, by proceedings dated 21-12-2000, the promotions ordered in the proceedings dated 13/14-12-2000 were directed to be kept in abeyance until further orders. It was at that stage, the respondents 2 and 3 approached the first respondent Tribunal challenging the proceedings dated 21-12-2000. While entertaining the O.A. Preferred by the respondents 2 and 3, the first respondent Tribunal ordered Status quo to be maintained. While the petitioners contended that the promotion order dated 13/14-12-2000 was not given effect to and therefore the Status quo as on that date, namely 12-1-2001 was that the respondents 2 and 3 were continuing only as Khalasies, the respondents 2 and 3 contended that the order of promotion was given effect to and that they were working as Fork Lift Operators from then onwards. Nevertheless by subsequent order dated 29-12-2000, the Railway Establishment cancelled the order of promotion dated 13/14-12-2000 and it was ordered to notify the concerned promotees.
4. In the above stated background, the first respondent Tribunal held that since respondents 2 and 3 have joined the promoted post and since the order of cancellation dated 29-12-2000 came to be made without hearing them, the same was liable to be set aside. Ultimately, the first respondent Tribunal quashed both the orders dated 21-12-200 0 and 29-12-2000 and declared that the respondents 2 and 3 were duly appointed to the post of Tech.Gr.III Electrical Line Fitter cum Flow Car/Fork Lift Operator and that they were entitled to continue in service as such. As against the said order of the first respondent Tribunal dated 3-5-2001, the petitioners have come forward

with this Writ Petition.
5. After hearing the learned counsel for the petitioners as well as the respondents 2 and 3 and on a perusal of the rules relating to promotion and also the proceedings which emanated from the date of issuance of the

first communication dated 8-7-2000 and the last one dated 29-12-2000, the following facts emerge for consideration.
6. In the rules relating to promotion, paragraph 159 of Indian Railway Establishment Manual Volume I, deals with the procedure to be followed in respect of filling up of vacancies in the category of Skilled Artisans Grade III in the scale of Rs.950-1500 in various Engineering Departments, which stipulates that 25% of such posts are to be filled up by selection from course completed 'Act Apprentices, ITI passed candidates and Matriculates from the open market, as well as serving employees apart from another 25% from serving semi-skilled and unskilled staff with educational qualification as laid down in Apprentices Act and the remaining 50% by promotion of staff in the lower grade as per prescribed procedure.
7. Paragraph 187 stipulates how the promotion to skilled categories from semi-skilled artisans and basic tradesmen in 50% quota set apart for the promotion are to be made. Rule 214 (a) provides as to how to fill up a non-selection post by promotion from among the senior most suitable Railway servants. Under 214(b), it is stipulated that while filling up a non-selection post, if a senior Railway servant is passed over, the authority making a promotion should record briefly the reason for such supersession.
8. The stand of the petitioner Railway Establishment is, that the post of Fork Lift Operator in the scale of Rs.3050-4590 is a post coming within the category of Tech.Gr.III Electrical Fitter (Power) and therefore it is governed by paragraphs 159, 187 and 214 of the Indian Railway Establishment Manual Volume I and the filling up of those vacancies are to be made from the category of Helper Grade I-General and Helper Grade II-General within which category, Khalasi Helper-semi skilled and Khalasi Helper -unskilled are also falling. It is therefore the contention of the petitioners that while 50% of the posts of Tech.Gr.III ELF/P cum Flow Car/Fork Lift Operator are to be filled up by promotion from senior most Helper Grade I (Khalasi Helper-semi skilled); 25% of such posts are to be filled up through recruitment by the Railway Recruitment Board and the remaining 25% through rankers quota serving Helper Grade I and Grade II Khalasi Helpers and Khalasies.
9. It is a fact that none of the above norms were followed while resorting to filling up of the seven posts of Tech.Gr.III ELF/P cum Flow Car/Fork Lift Operators when the ultimate order dated 13/14-12-2000 came to be issued by the Railway Establishment. When once it cannot be disputed that paragraphs 159, 187 and 214(a) apply to the recruitment of the above said posts, whatever proceedings issued by the Railway Establishment including the one dated 8-7-2000 and the subsequent orders of appointment dated 13/14-12-2000 cannot be held to have been issued in accordance with the prescribed rules relating to promotion and appointment to the posts of Tech.Gr.III ELF/P cum Flow Car/ Fork Lift Operators. The mere fact that by order dated 13/14-12-2000, the respondents 2 and 3 and three others came to be appointed would not ipso facto validate such appointment when the rules relating to the appointment of such posts prescribe a particular procedure to

be followed while resorting to such appointments.
10. It is not the case of the respondents 2 and 3 either before the first respondent Tribunal or before this Court that paragraphs 159, 1 87 and 214 are not applicable to the posts of Fork Lift Operators. It is also not the case of the respondents 2 and 3 that those posts do not fall within the category of Technical Grade III posts nor is their case that there are different rules prescribed for the filling up of such posts. Respondents 2 and 3 solely relied upon the proceedings dated 8-7-2000 in order to contend that the said proceedings called for volunteers, which prescribed passing of a trade test and possession of a valid driving licence, that the selection of respondents 2 and 3 came to be made on fulfilling of such vital requirements and therefore when once based on the said proceedings, the order of appointment came to be issued on 13/14-12-2000, there was no scope at all for the petitioners to vary the said order under any circumstances. It was further contended that when pursuant to the said order of appointment dated 13/14-12-2000, respondents 2 and 3 were allowed to work as Fork Lift Operators, thereafter the petitioners had no right at all to cancel such appointment under any circumstances.
11. There is considerable dispute between the petitioners and respondents 2 and 3 as to whether based on the order dated 13/14-12-2000, respondents 2 and 3 were allowed to take charge as Fork Lift Operators. One other significant factor which is not in controversy is that the three other persons who were selected along with the respondents 2 and 3 never came forward to challenge either the subsequent proceedings dated 21-12-2000 which directed the order dated 13/14-12-2000 to be kept in abeyance or the subsequent order dated 29-12-2000 cancelling the very appointment made under the proceedings dated 13/14-12-2000 . It is also not the case of respondents 2 and 3 that those three individuals also have taken charge and that they also continue to work as Fork Lift Operators even as on this date. After the emergence of the proceedings dated 29-12-2000, the petitioners have been consistently contending that a mistake had crept in, in the matter of issuance of the proceedings dated 8-7-2000 as well as the subsequent appointments made on 13/14-12-2000 and that immediately after realizing the mistake, the said selection was kept in abeyance by proceedings dated 21-12-2000 which was also subsequently cancelled on 29-12-2000 and that the said selection was never allowed to come into existence though by virtue of the orders passed in the contempt proceedings, respondents 2 and 3 are being paid the salary payable to that of Fort Lift Operators.
12. On analysis of the above stated circumstances, we can only conclude that while issuing the proceedings dated 8-7-2000, the rules relating to promotion to the post of Fork Lift Operators were completely ignored by the petitioners. When once we are able to steer clear of the position that the post of Fork Lift Operator is a post falling within Tech.Gr.III and the scale of pay of that post being Rs.3050-459 0, in the absence of any other rules having been brought to our notice at the instance of respondents 2 and 3, we have no hesitation to conclude that the said post is one which is governed by paragraphs 159 , 187 and 214 of the Railway Establishment Manual Volume I. The further affidavit filed on behalf of the petitioners on 25-6-2001 also confirms the said position. As stated earlier, we do not find any other paragraph in the Railway Establishment Manual Volume I exclusively prescribing the procedure for filling up the posts of Fork Lift Operators. In such

circumstances, when once paragraph 159 applies, as a sequence to it, the other procedure to be followed as prescribed under paragraph 187 and 214 are axiomatic. In such a situation when the proceedings dated 8-7-2000 was not issued inconsonance with the prescribed procedure relating to filling up of the vacancies created in that Tech.Grade III which takes within its fold, the post of Fork Lift Operators, irrespective of the conduct of the petitioners which led to the issuance of proceedings dated 13/14-12-2000, it will have to be held that the subsequent issuance of the proceedings dated 21-12-2000 and also the cancellation of the appointment made on 29-12-20 00 were fully justified and the same cannot be interfered with. The

claim of respondents 2 and 3 that they were allowed to work as Fork Lift Operators pursuant to the issuance of the order of appointment dated 13/14-12-2000 will not by itself entitle them to insist that said proceedings can never be allowed to be varied, irrespective of the fact that the same came to be issued in total violation of the rules relating to promotion or appointment to the post of Fork Lift Operators. We are not therefore in a position to confirm the order of the Tribunal in accepting the case of the respondents 2 and 3, and in granting the declaration in its order dated 3-5-2001. As we have reached to the above said conclusion based on the prevailing rules applicable to such promotion, we do not find any scope for interference with the orders dated 21-12-2000 or 29-12-2000 on the ground of denial of opportunity.

In the result, the Writ Petition is allowed, the order dated 3-5-200 1 of the first respondent Tribunal is set aside. By virtue of this order since the proceedings of the petitioners dated 21-12-2000 and 29-12-2000 have been restored, it is open for the petitioners to resort to filling up of the posts Tech.Gr.III ELF/P cum Flow Car/Fork Lift Operators in accordance with the rules relati ng to filling of those posts by following the prescribed procedure. There will be no order as to costs. Consequently, W.M.Ps. are closed.

(R.J.B.J.,) (F.M.I.K.J.,)
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Yes

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Copy to
The Registrar,
Central Administrative Tribunal,
Chennai Bench, Chennai-600 104.

R.JAYAIMHA BABU, J.
F.M.IBRAHIM KALIFULLA, J.
PRE DELIVERY ORDER IN
W.P.NO.11429 OF 2001
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TO
THE HONOURABLE MR.JUSTICE R.JAYASIMHA BABU
MR.JUSTICE F.M.IBRAHIM KALIFULLA □